

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

CLAYTON LEE BLANKENSHIP,

Respondent,

v.

HILARY ROSE PORTER,

Appellant.

DOCKET NUMBER WD77092

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 7, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Jack R. Grate, Judge

JUDGES

Division One: Pfeiffer, P.J., and Hardwick and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Michaela Shelton
Overland Park, KS

Attorney for Respondent,

Jonathan Sternberg
Kansas City, MO

Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

CLAYTON LEE BLANKENSHIP,

Respondent,

v.

HILARY ROSE PORTER,

Appellant.

OPINION FILED:
October 7, 2014

WD77092

Jackson County

Before Division One Judges:

Mark D. Pfeiffer, Presiding Judge, and Lisa White
Hardwick and Karen King Mitchell, Judges

Hilary Porter (Mother) appeals from the trial court's judgment modifying parenting time and designating Father's (Clayton Blankenship) address as Child's residential address for educational and mailing purposes. Mother raises three points on appeal. First, Mother contends that the trial court erred in excluding, for lack of foundation, her Exhibits 20 and 21, images of Mother's mobile phone screen purportedly showing text message exchanges between the parties, as well as excluding testimony about what the exchanges stated, based on the "best evidence" rule. Second, Mother contends that the trial court erred in holding that she failed to meet her burden to prove her proposed relocation was in good faith. Third, Mother argues that the trial court erred in granting Father's motion to modify and transferring Child's residential custody to Father because the court's decision was not in Child's best interests and was against the weight of the evidence. We affirm.

AFFIRMED.

Division One holds:

1. When the issue of the propriety of relocation is addressed by a trial court, whether the party seeking to relocate is acting in good faith is an issue that must be decided by the court. However, where, as here, the relocation has already occurred, the court need not reach the issue of relocation and may resolve the case on a motion to modify.

2. A trial court may consider the circumstances surrounding relocation of a child in deciding motions for modification, and it may conclude that those circumstances evidence a lack of good faith. Here, although Mother may have had a good faith purpose for relocating, the trial court was justified in concluding that she did not act in good faith when she relocated Child without waiting until she had the proper authority to do so.
3. The trial court did not err in excluding cumulative evidence.
4. Though violation of the notice provision for parental relocation does not, in itself, mandate a change in custody, it is a factor that a court can consider. Modification of custody is ultimately dependent upon the best interests of the child.
5. A court is not limited to consideration of facts arising since the prior decree; a court may take judicial notice of prior pleadings, judgments, and testimony to the extent that, when coupled with facts arising since the prior decree, they demonstrate a pattern of conduct.
6. The tender years doctrine has been abolished in Missouri.

Opinion by: Karen King Mitchell, Judge

October 7, 2014

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.